This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and CHANNEL LUMBER CO. (hereinafter "CHANNEL LUMBER"), 100 West Cutting Blvd., Richmond, CA 94804.

I. RECITALS

(1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, title 13 California Code of Regulations (CCR).

(2) HSC section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.

(3) Title 13 CCR, section 2190 *et seq.* was adopted under the authority of HSC section 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.

(4) Title 13 CCR, section 2190 *et seq.* authorizes the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(5) Title 13 CCR, section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test…", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194…" and "[k]eep the records specified in section 2194 for two years after the date of inspection."

(6) HSC section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this part any other

specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic particulate matter. On-Road vehicles are controlled under section 2025 within title 13 of the California Code of Regulations (CCR).

(9) Title 13 CCR, section 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of section 2025(g) or fleets that report may instead comply with the phase-in option of section 2025(i)."

(10) Failure to comply with the requirements of title 13 CCR, section 2025 is a violation of state law resulting in penalties. California HSC sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(11) CHANNEL LUMBER has elected to utilize the phase-in option provided for in title 13 CCR, section 2025(i).

(12) Title 13 CCR, section 2025(i)(1), phase-in option, requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs meet the PM BACT requirements by phasing in 30 percent of their fleet by January 1, 2012; 60 percent by January 1, 2013; and 90 percent by January 1, 2014.

(13) The ARB has documented that CHANNEL LUMBER failed to have 30 percent of their fleet meet the PM BACT phase in by January 1, 2012; and failed to have 60 percent of their fleet meet the PM BACT phase in by January 1, 2013.

(14) California HSC, section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use Off-road diesel vehicles (off-road vehicles) are powered by diesel fueled

engines that emit toxic particulate matter. Off-road vehicles are controlled under sections 2449 within chapter 9, article 4.8, title 13 CCR.

(15) Title 13 CCR, section 2449 (b) states except as provided in section 2449 (b)(2)(G) this regulation applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

(16) Title 13 CCR, section 2449 (f) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).

(17) Title 13 CCR, section 2449 (g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.

(18) Failure to report and label equipment is a violation of state law resulting in penalties. HSC, section 39674, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(19) The ARB, has documented that CHANNEL LUMBER failed to report equipment prior to the August 1, 2009 deadline.

(20) In order to resolve these alleged violations, CHANNEL LUMBER has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(21) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and CHANNEL LUMBER agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against CHANNEL LUMBER for the alleged violations referred to above, and CHANNEL LUMBER'S payment of the penalties set forth in Section 1 below, the ARB and CHANNEL LUMBER agree as follows:

(1) Upon execution of this Agreement, CHANNEL LUMBER shall pay a civil penalty of twenty-eight thousand five hundred dollars ($28,500). Payment

shall be made in check form as described below, and payments shall be made in 3 payments beginning on **March 5, 2014**.

SETTLEMENT AGREEMENT AND RELEASE BETWEEN ARB AND **CHANNEL LUMBER**:

Payment Due Date:		**In the Amount of and Paid to:**
(1)	March 5, 2014	**$ 2,375.00** paid to the order of **Air Pollution Control Fund** **$ 7,125.00** paid to the order of **Peralta Colleges Foundation**
(2)	May 5, 2014	**$ 9,500.00** paid to the order of **Air Pollution Control Fund**
(3)	July 7, 2014	**$ 9,500.00** paid to the order of **Air Pollution Control Fund**

Please submit the signed settlement agreement and checks to:

Mr. Gerald Berumen, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, CHANNEL LUMBER shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if CHANNEL LUMBER, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving CHANNEL LUMBER, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against CHANNEL LUMBER, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of CHANNEL LUMBER'S, its subsidiary, or parent company's properties, or if any deposit account or other property of CHANNEL LUMBER, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or CHANNEL LUMBER, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory.

Furthermore, the penalty is intended to deter and punish CHANNEL LUMBER for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on CHANNEL LUMBER by ARB arising from the facts described in recital paragraphs (1) through (19) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(5) CHANNEL LUMBER shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, 2190 *et seq*, and 2485 *et seq*.

(6) CHANNEL LUMBER shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.

(a) CHANNEL LUMBER shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If CHANNEL LUMBER uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, CHANNEL LUMBER shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(7) CHANNEL LUMBER shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).

(a) CHANNEL LUMBER shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case CHANNEL LUMBER uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, CHANNEL LUMBER shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by CHANNEL LUMBER to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(8) CHANNEL LUMBER shall submit copies of all PSIP compliance records for year 2013 to the ARB by March 5, 2014 and for year 2014 by January 31 of the following year. Copies shall be addressed to the attention of Mr. Gerald Berumen at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any CHANNEL LUMBER fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(9) CHANNEL LUMBER shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this Agreement.

(10) Each 1974 or newer diesel powered heavy-duty vehicle in the CHANNEL LUMBER fleet shall remain in compliance with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).

(11) CHANNEL LUMBER shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.

(12) CHANNEL LUMBER shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(13) CHANNEL LUMBER shall comply with the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq. By March 5, 2014, CHANNEL LUMBER shall submit the proof of compliance (including but not limited to documents from DMV showing non-operation, Lease Agreements verifying the acquisition of vehicles compliant with the regulation, etc.) to Mr. Gerald Berumen, Air Pollution Specialist, Air

Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(14) CHANNEL LUMBER shall not violate the Off-Road Diesel Vehicle Regulation as codified in title 13 CCR, section 2449 et seq.

(15) This Agreement shall apply to and be binding upon CHANNEL LUMBER, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(16) This Agreement constitutes the entire agreement and understanding between ARB and CHANNEL LUMBER concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and CHANNEL LUMBER concerning the subject matter hereof.

(17) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(18) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(19) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(20) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(21) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC sections 42403 and 43024.

Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations.

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the Phase-In Compliance Schedule is $24,000 or $500 per month of violation:

- $12,000 for 1 vehicle not meeting the 30% phase-in requirement, (24 months in violation); and
- $12,000 for 2 vehicles not meeting the 60% phase-in requirement, (12 months in violation).

The penalty was discounted based on the fact that this was a first time violation. In addition, the violator made diligent efforts to comply and to cooperate with the investigation.

Off-Road Vehicle Violations

The per vehicle penalty for the Off-Road violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations.

The penalty obtained for CHANNEL LUMBER violations involved in this case is $4,500 or $375 per vehicle for 12 vehicles.

The penalty was discounted based on the fact that this was a first time violation. In addition, the violator made diligent efforts to comply and to cooperate with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (title 13 CCR, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 et seq., 39650-39675 and because CHANNEL LUMBER failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(i).

Off-Road Vehicle Violations

The penalty provision being applied for the In-Use Off-Road Diesel Regulation (title 13 CCR, section 2449 et seq.) violations (including labeling) is HSC section 39674 because the Off-Road rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39660, *et seq.* and because CHANNEL LUMBER failed to register and label 12 vehicles as required by the In-Use Off-Road Diesel Regulation.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Off-Road Vehicle Violations

The provisions cited above do not currently prohibit emissions above a specified level of g/hp-hr.

(22) CHANNEL LUMBER acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(23) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(24) The penalty was based on confidential settlement communications between ARB and CHANNEL LUMBER that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and CHANNEL LUMBER and reflects ARB's

assessment of the relative strength of its case against CHANNEL LUMBER, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CHANNEL LUMBER may have secured from its actions.

(25) Now therefore, in consideration of the payment on behalf of CHANNEL LUMBER to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases CHANNEL LUMBER and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (19) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**CHANNEL LUMBER**	
Signature:	Ellen M. Peter	Signature:	Dan DeSimoni
Print Name:	Ellen M. Peter	Print Name:	Dan DeSimoni
Title:	Chief Counsel	Title:	VP
Date:	3/13/2014	Date:	2-19-14